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The Tribal Government

FOR NEARLY FIFTY YEARS FOLLOWING ALLOTMENT, THE KLAMATH tribal government constituted the formal instrument for arriving at common objectives, the ultimate guardian against encroachments upon Klamath treaty rights, and the corporate symbol of Indian status. Its form and operations sensitively reflected the interplay of continued efforts by the Bureau of Indian Affairs to mold Indian life and the Indian reaction to those efforts. They gave evidence as well of the diversity of opinion which presently arose among tribal members as to the future in which they wished to live.[1]

Central to the importance of the tribal government was the considerable wealth over which it presided: at the close of allotment, tribal property amounted to over 860,000 acres of land, roughly three-fourths of it in prime timber, owned corporately by some 1,150 members. By contrast, the Umatilla reservation, in the northeast section of the state, in 1908 possessed fewer than 2,000 acres in unallotted tribal lands for a comparable (893) membership.

The principal body of the tribal organization was the General Council, a successor to those sessions convened on occasion in times past to discuss matters of common concern. Such *ad hoc* councils had formerly been found useful to the federal government for mustering a representative Indian body; but with the development of an executive body, the General Council also emerged as a more regular entity. Like its predecessors, it was originally composed of all the men of the Tribe; after the passage of the Nineteenth Amendment, the women were added to their number.

Since the highly rationalized bureaucracy of the government found the occasional councils too unwieldly to handle the in-

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crease of tribal business following allotment, the Bureau of Indian Affairs pressed for the formation of a supplementary executive body. At Klamath the need for such a body may have been underscored by the abuse of the common council in the partisan sessions called by the Kirk and Brown factions. Thus, 1908 saw the introduction of an executive body, called the tribal council, to function in addition to the occasional councils. Initially, it was made up of twelve men, six from each End of the reservation, and with communal representation: its membership included seven Klamath, three Modoc, and one each from the Pit River and Paiute. Since it proved difficult to maintain a quorum, the number was subsequently reduced to eight members.

In 1927, the factionalism which had earlier brought into question the legitimacy of the common council now touched the tribal council; for in that year a dissident group elected a rival body and claimed that it had superseded the existing council. Their action placed in jeopardy the efficient administration of the tribal resources, and the Commissioner of Indian Affairs consequently insisted that matters be set upon a constitutional footing. After considering several tribal charters submitted to them as models, the Klamath in 1929 enacted their own constitution and by-laws for the executive body, now restyled the Business Committee. Its six members, three from each End, were to consider ". . . business matters pertaining to the Tribe. [Matters] of great importance to the Tribe and which the Business Committee believe should be referred to a general tribal council" might be so referred by a vote of five members of the Committee, with the consent of the Superintendent.[2]

Once more, in 1950, envisaging a time when the tribal government would have full control over the common estate, a new constitution was enacted, this time for the General Council. By its terms, all powers were vested in that body, made up of all adult tribal members. In addition, an Executive Committee was designated, to be composed of the eight members—the number had again been increased—of the erstwhile Business Committee, together with the President and Secretary of the General Council. To this new committee, the General Council was authorized to delegate powers, although as matters turned out it did so only reluctantly and after long delay. In turn, by appropriate vote

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In turn, by appropriate vote
*648 within ninety days, the General Council might—and on occasion
*659 did—reverse the action of its Executive Committee. Finally, by a
642 petition of at least one-fourth of the eligible voters, an action of
• 645 the General Council might be submitted to a referendum of tribal
[666] members.[3]

In the succession of tribal bodies, the interest of the government was not solely the convenience of securing formal sanction in property matters concerning the common interest of enrolled
[182] members. The tribal government was to provide as well a regular channel by which the government might assess tribal opinion, consult with leaders, and announce programs; and it was to furnish tribal members with experience in responsible citizenship. Through this instrument, a representative body was to be articulated with Bureau administration, its decisions being rendered concrete in official minutes and subjected to review by higher administrative echelons.

Tribal rule is municipal in character, as seen in the restricted scope of its powers.[4] The narrow administrative domain with which the Klamath executive dealt is suggested by the names of the permanent adjuncts of the Executive Committee, the Tribal Loan Board and the Enrollment Committee. In 1947, some fifteen tribal members and one other were employed in General Council and Loan Board activities. By contrast, the Superintendent employed 123 persons, including 31 tribal members and 40 Indians from other groups, in the administration of agency, health, extension, law and order, roads, forestry and grazing, and irrigation.[5] Over these areas the Executive Committee might exercise a veto by cutting from the proposed Agency budget tribal funds allocated to an unwanted item. In this way, the hospital, bull pool, and tribal herd have occasionally been threatened. Ordinarily, however, the Executive Committee took no positive action in the development of a budget. Understandably, Klamath efforts to appoint a tribal member to serve as watchdog over Agency administration were not kindly received.

[693] In the formulation of general policy, the executive drew upon the advice of the tribal attorney, as well as upon unofficial counsel, both sought and volunteered. All major policy decisions required approval by the General Council and were subject to review within the Bureau of Indian Affairs and the Department

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of the Interior. An essential communicatory function was served by the delegations now sent annually to Washington, to discuss policy matters with Bureau officials and with members of Congress. Elected by the General Council, delegates were generally instructed by that body and by the Executive Committee on the official position to be taken. These positions of trust and power were frequently filled by members of the Executive Committee.

By contrast with administrative and executive functions, the regulatory functions which Eisenstadt terms juridical-cultural found little place within the formal structure.[6] For the exercise of legitimate force lay rather with the Superintendent than the Tribe, and even Indian police and courts, while they endured, reflected his authority. For well over a generation during the last period of tribal rule, after "Indian custom" marriage had lost legal status there were no traditional practices requiring special adjudication. In practice, neither expulsion from the Tribe nor curtailment of membership privileges has been meted out as punishment for offenses against the tribal body. At least two tribal members have been re-elected to office despite the common knowledge that they had served prison sentences for felony, a record that by formal regulation should have disqualified them. Presiding over a territory, the Tribe was particularly lax, when not indeed impotent, in exercising control over absentee members. Indeed, the sole coercion brought to bear, and that from a partisan vantage only, has been the withholding of benefits under distribution.

In the General Council there resided undifferentiated tribal powers, and consequently this body best symbolized the continuity of tribal government. For the general membership it simultaneously embodied their tribal identity and functioned as the proper arena for public debate. It was in this assembly, rather than in the executive bodies, that many preferred to see issues discussed and decisions rendered. Reluctance to delegate powers to the executive under the 1950 constitution, which had the result of deferring that act for a year and one-half, was not merely an expression of factional distrust but also voiced a continued Klamath preference for direct and informal consensus in tribal affairs.[7]

Tribal membership was, as we have seen, only one of several

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integral to the maintenance of power. Tribal leadership had become a full-time job, requiring its own set of special talents. The rewards offered were considerable, not only those of power and prestige, but in per diem fees and in the funds advanced on occasion by followers and—persistent rumor had it—by outside interests as well.

The rise of the new leaders did not entirely spell the eclipse of the old. Even in the last decade of tribal government, a senior member of the executive was James Johnson, a wealthy stockman from the Lower End. Another man, Seldon Kirk, one of the three politically prominent sons of Jesse Kirk, worked as a carpenter for the Agency, and was therefore sometimes accused of being a pawn of the administration. He took up the guerdon from his brother, Clayton, and later came to exemplify a moderate position in his own right, even in the last, turbulent days of the Tribe. Until his retirement, he served as permanent chairman of the General Council, then was succeeded by his brother, Jesse Lee. The example of Seldon Kirk in turn brought onto the political scene several younger men, like him occupying the middle ground, and concerned only peripherally with the party building activities of the professional politicians.

Tribal government thus developed along the intersection of an informal, particularistic political system and a counterposed, highly rationalized bureaucracy; and the emergence of the new leaders was merely one of the consequences. Within the frame so defined, the leaders were beset with the party-political[10] task of marshaling support for their programs. It was hazardous to trust alone to appeals to reason, for the issues were often complex and difficult to interpret for a wary electorate. Since the number of his devoted adherents was inadequate to carry the day, the practical politician had resort to a supplementary arsenal of tactical devices. It was at this level that political acculturation proved to have been most pervasive.

In he first instance, a leader might sometimes seek to mobilize support by playing upon a popular cause. Often this took the form of a defense against an outsider. A claim against the government, attacks upon the Bureau, particularly in the person of the Superintendent,[11] the repulse of intrusions upon the tribal domain by white commercial or sporting interests: these issues

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*648 might be exploited instrumentally to broaden the base of appeal.
*657 Other devices entailed the manipulation of particularistic
665 loyalties. Politicians from the less populous and ethnically more
619 diverse Upper End endeavored to retain districting, whereby the members of the executive body were elected in equal numbers by each End; and they also sought to preserve communal representation, which ensured that each of the traditional subtribal groups, Pit River and Paiute, as well as Modoc and Klamath, would find a place in that body. These measures were opposed as a matter of course by Crawford, the Lower End leader; but it was he in turn who had been responsible for the election in 1927 in which only the Lower End took part, thus creating a second tribal council and precipitating the Bureau's demand for a tribal constitution.

*648 The tactics employed to control voting were diverse. In general
*657 elections, Jackson favored restriction of voting to polling places
665 located on the reservation, against attempts by his rival to secure
619 absentee balloting, a measure that would swell the response from
• 646 his off-reservation constituency. For General Council meetings,
666 Jackson sought to continue the practice of alternating their site between the Ends, and for those held at the Agency he provided stages at tribal expense to transport members from the Upper End.

Seating within the General Council was conventionally by faction, a device that provided an easy check upon voting regularity, although the chairs along the wall afforded a retreat for the less partisan. Jackson further favored a standing vote,[12] while Crawford, particularly while he was out of power, called instead for a secret ballot. Each side on occasion exercised the boycott to prevent the mustering of a quorum when the issue was likely to go against it,[13] and Crawford also resorted to the filibuster, under cover of which his forces might withdraw in order to attain the same end. Each also strove, when he no longer controlled the executive body, to route business instead through the General Council.

*648 In the recruitment of a following, leaders found many occasions
*657 to render personal services, appointing the faithful to tribal
665 positions, serving as advocate in their favor, sponsoring the enroll-
619 ment of their children as tribal members, or advancing them
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money from the tribal fund set aside for the purpose. Interlocking memberships of the Executive Committee, the Enrollment Committee, and the Loan Board made those bodies the apex of tribal power. If the first-named was the central body, and important particularly in relations with agencies beyond the Tribe, the other two were no less essential in the administration of patronage.

The Tribal Loan Board had been established to preside over a fund set aside from the Yamsay Judgment of 1938, by which the issue of the Military Road had finally been settled. The fund had been designed to provide capital advances for tribal members, many of whom found bankers reluctant to lend to them. Although loans were supposed to be applied only to improvements, it became common practice to spend them merely as an anticipation of the next per capita. When the Bureau called a halt to its operations in 1955, the Board had out on loan approximately a half-million dollars, or the equivalent of almost $250 per member, and a collector had to be engaged to recover a sizeable portion of it.[14]

The Enrollment Committee was the third seat of power. Admission of one's children to tribal membership was eagerly sought, and not alone for reasons of sentiment. Once he was a tribal member, a child was vested with a pro-rata share of the undivided tribal estate, amounting at the time of termination to some $43,500. In addition he qualified to receive the per capita dividends that, subject to Agency restriction, were commonly drawn upon to defray current family living expenses.

Despite—and sometimes because of—these tactical measures, by which partisan leaders strove to bind them, many tribal members were driven into abstention by the bitter contentions that marked the final generation of tribal life. Although hundreds flocked to the luncheon set out at tribal expense in the Council Hall for those attending the General Council, morning meetings failed so frequently to draw a quorum that they were discontinued; and even afternoon sessions sometimes could not muster one hundred adults from among the thronging diners to transact tribal business. When they did come, they were often in holiday mood, frequently interrupting speakers, and exhibiting a keen appreciation for lengthy, eloquent, and often irrelevant harangues

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in the Klamath language.[15] In this setting, the chairman and principal leaders sought with great difficulty to operate under Robert's Rules of Order. Council minutes record numerous instances in which many of those present cast no vote.

In this, as in other political contexts, the observer could sense what some members admitted readily: a reluctance to commit themselves to decisions that might lead to dangerous consequences on either side. As in their dealings with the Agency, individuals accepted as a right what those controlling the executive had to offer, and declined to be bound thereby. Factional charge and innuendo had so sapped confidence in the Klamath leadership that interviews conducted in the course of termination revealed that all but one of the respondents (118 in all) favored a management plan administered by unknown trustees over an organization headed by their own members.[16]

It was not, however, factionalism alone that was at the root of the uncertainty. The long dependence of individuals upon per capitas, and the corresponding lack of experience in pursuing a livelihood, understandably enough made many wary of any change that might threaten the economic niche in which they dwelt. Moreover, on many of the more complex issues involving property their very lack of experience made them easily swayed by irrelevancies. Not infrequently, Seldon Kirk, when presiding over a vote of the General Council, would query, "I wonder how many of you know what you were voting for?"—and, calling for a reballoting, would see the issue solidly reversed.

If they were uncertain in the exercise of their power, tribal members nonetheless felt a strong need to display it. Real and fancied acts of coercion had left a legacy of alienation, to which the impersonal bureaucratic operation of the Agency only added. In a span during which tribal membership had done little more than double, the Agency staff had swelled from an early 5 members to an ultimate figure of 139, some twenty-five times as great. With expansion, the Agency program had become compartmentalized, each division taking on a life of its own and growing endlessly ramified. Bureaucratization, together with the frequent turnover in the upper echelons of administration, led to increasing impersonalization of relations. Subtly, the training of Klamath